

# Utah employers cannot deny benefits based upon an employee's legal or illegal immigration status

## **Q&A Facts on the “Morley Bill”**

### **Prepared by Utah Labor Commission**

(Enrolled 1<sup>st</sup> Substitute House Bill 384 sponsored by Rep. Mike Morley in 2008 Utah Legislative Regular Session)

**1. *If I am injured or become sick because of my work, am I entitled to workers’ compensation benefits?***

**Answer:** Yes. Utah’s Workers’ Compensation Act and Occupational Disease Act provide medical benefits and disability compensation for employees who suffer from work-related injuries and illnesses.

**2. *Am I covered by the workers’ compensation system even if I am an undocumented worker?***

**Answer:** Yes. The workers’ compensation system covers “employees,” and the Utah Workers’ Compensation Act specifically defines “employee” to include “aliens . . . whether legally or illegally working for hire.”

**3. *I have heard that the Utah Legislature passed a law that allows employers to deny workers’ compensation benefits to undocumented employees. Is that true?***

**Answer:** No, but the answer requires some explanation. The 2008 Utah Legislature enacted 1<sup>st</sup> Substitute House Bill 384 (HB384), which has two parts affecting workers’ compensation benefits:

- 1) temporary disability, and
- 2) permanent total disability.

**Temporary disability.** If an injury prevents a worker from immediately returning to his or her regular job, the employer is required to pay “temporary” disability compensation to replace lost wages while the worker is healing. If the injured worker is brought back to work in a suitable light-duty position and is subsequently fired for certain limited types of misconduct, the employer can avoid or reduce its liability for temporary disability compensation. In summary, the bill allows an employer to request Labor Commission permission to stop or reduce temporary disability compensation if the employer “reasonably” terminated an injured worker’s light-duty employment “for cause” related to the worker’s:

- a) conduct that is criminal, violent, or which violates reasonable written workplace rules regarding health, safety, licensure or nondiscrimination;
- b) incarceration; or
- c) alcohol or drug abuse.

- **Does this provision affect benefits other than temporary disability?**

**Answer:** No. It has no effect on an injured worker's right to medical treatment, permanent disability compensation, or survivors' benefits.

- **Does this provision specifically apply to undocumented workers?**

**Answer: No.** All employees are subject to the foregoing provisions of HB384. Any worker who is terminated from light-duty work for one of the reasons set forth in the bill runs the risk of losing temporary disability benefits.

- **Do these provisions have a disparate impact on undocumented workers?**

**Answer:** Some people suggest an employer could take advantage of the provisions of HB384 by: 1) offering light-duty work to their injured, undocumented workers; 2) firing those workers for the "crime" of working without documentation; and then 3) asking the Commission to approve termination of the workers' temporary disability benefits. No employer has brought such a request to the Commission. Furthermore, the Commission believes that such an interpretation violates both the intent and the language of the bill.

**Permanent total disability.** The second part of HB384 deals with permanent total disability compensation. If a worker suffers severe injuries that preclude the worker from ever returning to employment, the worker is entitled to monthly disability benefits for life. HB384 does not affect an undocumented worker's right to receive permanent disability compensation for under such circumstances. However, in other cases, an injured worker can return to employment if he or she is provided with retraining and/or rehabilitation. HB384 does address the rights of undocumented workers in this second category of cases. In summary the bill provides that, if an employer develops, implements and successfully completes a plan to return an undocumented worker to employment, and the only remaining obstacle to the worker's return to employment is his or her undocumented status, the employer is not required to continue paying permanent total disability compensation.

- These provisions of HB384 have no effect on the worker's right to medical treatment, or survivors' benefits. As already mentioned, the provisions do not affect workers whose injuries are so severe that they cannot be retrained or rehabilitated.

**4. Question:** Can injured workers have an attorney in these proceedings?  
How is the attorney paid?

**Answer:** Injured workers are entitled to have an attorney represent them. The amount of attorney fees is subject to Labor Commission approval and, under existing law, must be deducted from the injured worker's benefits. The Commission's "emergency" rule does not address the amount of attorney's fees, but that question will be considered as part of the Commission's regular rule-making process, which is now under way.

**5. What has the Labor Commission done to implement HB384?**

**Answer:** The Commission has taken two rule-making actions to implement HB384. These actions include: 1) a temporary "emergency" rule; and 2) initial consideration of a "final" rule.

**Temporary emergency rule.** In order to have procedural rules in place when HB384 took effect on July 1, 2008, the Labor Commission enacted a temporary emergency rule pursuant to § 63G-3-304 of the Utah Rule-Making Act. This rule can **only** remain in effect for 90 days. It deals **only** with procedural issues; it does not address substantive questions.

**Development of a final rule through the regular rule-making procedure.** At the same time the Commission established its emergency rule, it also began developing a final rule. The Commission is now soliciting informal comments from any interested individuals or groups. Based on those comments and the Commission's own evaluation of the issues, the Commission will present a draft rule to the Utah Workers' Compensation Advisory Council. This will be followed by a hearing open to the public to discuss the proposed rule. After considering the comments provided at the hearing, the Commission will submit its draft rule, with any revisions, to the Division of Administrative Rules, which will publish the proposed rule in the **Utah Bulletin**. The rule will remain open for additional public comment for 30 days. Only after the expiration of this final 30-day public comment period can the Labor Commission enact the final rule.